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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/532,024	03/21/00	OGAWA	A 1417-305

IM52/1107

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EXAMINER	
MAI,H	
ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 11/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/532,024	OGAWA ET AL.	
	Examiner	Art Unit	
	Hao T Mai	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *17 August 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5&7* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The previous grounds of rejection have been withdrawn.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites the limitation "monoester content". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rule(4,419,378). Rule teaches a milk beverage(abstract) having polyglycerol fatty acid ester. Rule is silent as to whether or not the polyglyceral fatty acid ester having a cloud point of not less than 90C. However, Rule teaches a polyglyceral fatty acid ester having a degree of polymerization of 12-18, and a palmitic acid(col. 1+), therefore, inherently it should have the same cloud point. where the production of decaglycerol stearate is shown and applicants'

Table 3. In the alternative, one skilled in the art would have expected to have a milk beverage having the cloud point as claimed since the degree of polymerization in Rule falls within that claimed.

Regarding claim 9, Rule teaches a milk coffee(col. 2, lines 1+).

4. Claims 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Rule in view of Babayan(3,637,774) or Seiden et al(3,968,169). Rule teaches everything but is silent as to whether or not the polyglycerol has an average degree of polymerization of 4 to 12(Rule, col. 4, lines 1+). Babayan and Seiden both teach a process for preparing polyglycerol having an average degree of polymerization of 4 to 12(Babayan col. 2, Seiden col. 3). It would have been obvious to one of ordinary skill in the art to use in the polyglycerol having an average degree of polymerization of 4 to 12 as taught by Babayen and Seiden, since both Babayen and Seiden teaches that this polyglycerol can be used as emulsifying agent in food industry.

Rule in view of Babayan or Seiden teach all of the claimed limitations except for the specifically claimed percentage of the composition. However, the specifically claimed percentage are not seen to be a patentable distinction, therefore, it would have been obvious to one of ordinary skill in the art to modify the method of product of Rule in view of Babayan or Seiden by routine experimentation to arrive at the specifically claimed percentage.

5. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rule in view of Talkington et al(4,960,602)(Talkington). Rule teaches all of the claimed

limitations, however, he is silent as to whether or not the sucrose fatty acid contains palmitic acid or stearic acid. Talkington teaches a sucrose fatty acid contains palmitic acid (col. 4, lines 15+). It would have been obvious to one of ordinary skill in the art to add the sucrose fatty acid contains palmitic acid as taught by Talkington, since Talkington teaches that these sucrose has the benefit of providing reduced calorie foods and beverages.

Rule in view of Talkington teach all of the claimed limitations except for the specifically claimed ratio and percentage of the composition. However, the specifically claimed ratio and percentage are not seen to be a patentable distinction, therefore, it would have been obvious to one of ordinary skill in the art to modify the product of Rule in view of Talkington by routine experimentation to arrive at the specifically claimed ratio and percentage.

Regarding claim 9, see col. 7, lines 60+.

6. Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Rule. Rule teaches all of the claimed limitations except for the specifically claimed percentage of the composition. However, the specifically claimed percentage are not seen to be a patentable distinction, therefore, it would have been obvious to one of ordinary skill in the art to modify the product of Rule by routine experimentation to arrive at the specifically claimed percentage.

Response to Arguments

7. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hao T Mai whose telephone number is (703)306-9171. The examiner can normally be reached on 8AM-7PM; MON-THU.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

hm
November 5, 2001

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
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